REMARKS

Claims 1-4 and 9-12 remain in connection with the present application, with claims 5-8 and 13 being cancelled without prejudice or disclaimer of the subject matter contained therein. With regard to the cancelling of 5-8 and 13, these claims were cancelled as being directed to a non-elected invention. Applicants hereby reserve the right to file a divisional application on the subject matter of these non-elected and cancelled claims.

Information Disclosure Statements

Applicants note that an Information Disclosure Statement was filed in connection with the present application on November 20, 2003. However, in the Examiner's Office Action of December 3, 2003, the Examiner did not acknowledge consideration of the documents submitted in the aforementioned Information Disclosure Statement. It is presumed that the Information Disclosure Statement and Office Action crossed in the mail and thus the Examiner had not yet had an opportunity to consider the documents submitted in the Information Disclosure Statement of November 20, 2003.

Accordingly, in response to the present Amendment, **Applicants respectfully request the Examiner to consider the documents submitted with the aforementioned Information Disclosure Statement of November 20, 2003.** The Examiner is further requested to initial the PTO-1449 form submitted therewith, a copy of which is attached to the present Amendment, and to return the initialed PTO-1449 form to the Applicants indicating the Examiner's consideration of each of the various documents submitted therewith.

In addition, Applicants note that an Information Disclosure Statement was filed in connection with the present application on July 2, 2002. However, in the Examiner's Office Action of December 3, 2003, the Examiner did not acknowledge consideration of the documents submitted in the aforementioned Information Disclosure Statement. Although it is presumed that the documents were considered, acknowledgement of this consideration is still requested.

Accordingly, in response to the present Amendment, **Applicants respectfully request the Examiner to consider the documents submitted with the aforementioned Information Disclosure Statement of July 2, 2002.** The Examiner is further requested to initial the PTO-1449 form submitted therewith, a copy of which is attached to the present Amendment, and to return the initialed PTO-1449 form to the Applicants indicating the Examiner's consideration of each of the various documents submitted therewith.

Priority Document

The Examiner's Office Action indicates that none of the certified copies of the priority document have been received. **However, Applicants submitted a priority letter on May 20, 2002, including a certified copy of applicants' priority document.** A copy of this letter and a copy of the first page of the priority document are enclosed herewith. In addition, applicants further provided a stamped copy of Applicants' postcard indicating receipt of Applicants' priority document and priority letter. It is believed that the Examiner merely checked the wrong box, and meant to indicate that the certified priority document had been received. **Accordingly, correction of this**

inadvertent error and acknowledgement of receipt of applicants' priority document is respectfully requested.

Election/Restriction

The Examiner's Office Action contains a restriction requirement, in response to which Applicants orally elected Group 1, including claims 1-4 and 9-12. Applicants hereby affirm this election and further note that non-elected claims 5-8 and 13 have been cancelled without prejudice or disclaimer of the subject matter contained therein. Applicants again reserves the right to file a divisional application on the subject matter of the non-elected and cancelled claims.

Objection To The Specification

The Examiner has objected to the Specification because of one minor informality. Accordingly, this minor informality has been corrected and thus withdrawal of the Examiner's objection is respectfully requested.

Double Patenting Rejection

The sole remaining rejection in connection with the present application is that of a rejection of claims 1-4 and 9-12 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-8 of U.S. Patent No. 6,576,402. This rejection is respectfully traversed.

The Examiner has alleged that U.S. Patent No. 6,576,402 contains conflicting claims which are admittedly non-identical to those of claims 1-4 and 9-12 pending in

connection with the present application, but which allegedly are not patentably distinct from these claims.

More specifically, the Examiner has admitted that the claims of U.S. Patent 6,576,402 are **"more broad"** than claims 1-4 and 9-12 of the present application. The Examiner uses this as the basis for rejecting claims 1-4 and 9-12 of the present application under obviousness-type double patenting. Applicants respectfully submit that if the claims of U.S. Patent No. 6,576,402 are broader than the claims of the present application as admitted by the Examiner, **then this is not a proper basis for an obviousness-type double patenting rejection** as will be explained as follows.

Obviousness-type double patenting is described in MPEP § 804. Specifically, it states that the first question to be asked is—"Does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?". If the answer is yes, then an "obviousness-type" double patenting rejection may be appropriate. Thus, the claims in the application (namely claims 1-4 and 9-12 of the application) must define an invention which is not merely an obvious variation of the invention claimed in the patent (namely the claims of U.S. Patent No. 6,576,402). Accordingly, as such, **all elements in the application claims must be anticipated or rendered obvious by the claims of the patent**.

In terms of claim breadth, if an application claim is broad and thus contains elements a, b and c, for example; and if a patent claim is more narrow and includes elements a, b, c and d; then the patent claim necessarily meets or at least renders obvious each of the elements of the application claim. Namely, if the application claim is broad and includes only three elements, and if the patent claim is narrower and includes each of

the three elements of the application claim and an additional element, **then the narrow patent claim would meet or render obvious each of the limitations of the broad application claim;** and thus an obviousness-type double patenting rejection would be appropriate.

In the present situation, however, **the Examiner alleges that the patent claims are more broad than the claims of the application (not more narrow as set forth in the example above).** Thus, the Examiner is admitting that there is clearly at least one limitation in the application claims which is not present in the patent claims.

Accordingly, absent some additional teaching (which must also be properly combinable with the patent claims and which must also meet or render obvious the missing limitation of the narrow application claims), an obviousness-type double patenting rejection is not appropriate. Accordingly, in the present situation, as the Examiner has merely admitted that patent claims are "more broad" than those of the application claims, the Examiner has clearly not met the burden of finding that each of the limitations of the application claims are either met by or rendered obvious by limitations of the patent claims. **Accordingly, the Examiner has provided no evidence of how the claims of U.S. Patent No. 6,576,402 render any of claims 1-4 and 9-12 of the present application obvious.** Accordingly, withdrawal of the Examiner's rejection is respectfully requested.

CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of all outstanding objections and rejections and allowance of each of claims 1-4 and 9-12 in connection with the present application are earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Donald J. Daley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C

By _____
Donald J. Daley, Reg. No. 34,313

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/dw/bof